

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Children's Aid Society and Family Services of Colchester County v. E.Z.* , 2007 NSCA 99

**Date:** 20071017

**Docket:** CA No. 280192

**Registry:** Halifax

**Between:**

The Children's Aid Society and Family Services of  
Colchester County

Appellant

v.

E.Z. and J.M.

Respondent

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**Restriction on Publication:** pursuant to s. 94(1) of the **Children and Family Services Act**

**Judge:** The Honourable Justice Nancy Bateman

**Appeal Heard:** September 11, 2007

**Subject:** Child welfare.

**Summary:** Agency appeal from access ordered in conjunction with permanent care.

**Issue:** Did the judge err in ordering access?

**Result:** Appeal allowed. Although the judge recited the proper burden of proof in his reasons, a review of the evidence reveals that he could not have concluded that ongoing access would be in the best interests of the children. There was no factual support for his key conclusion that the children's "blaming of each other" would be relieved through ongoing access with their mother; he erred in principle in relying upon unspecified passages of

**Intervention for Children of Divorce, Custody, Access and Psychotherapy** (2nd ed.) by Dr. William Hodges, a work not cited by either counsel, in support of continuing access in a child welfare situation; he failed to apply the statutory factors in s. 47(2) of the **Children and Family Services Act**, S.N.S. 1990, c. 5, as am. and the guidance of the Supreme Court of Canada in **New Brunswick (Minister of Health and Community Services) v. L.(M.)**, [1998] 2 S.C.R. 534, to the mother's request for access; there was no evidentiary support for his conclusion that children could receive positive influences from their mother or enjoy "emotionally healthy" access with her. The evidence of the assessors was that access was detrimental to the children.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 20 pages.**